



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Rubber Crafters, Inc.

File: B-225421

Date: October 31, 1986

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### DIGEST

Protest of award filed more than a year after award is made is untimely where there is no indication the matter has been previously protested to the agency or a showing that protester has diligently pursued the information necessary for the protest.

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### DECISION

Rubber Crafters, Inc. (RCI), protests the Army's award of a contract for collapsible fabric water tanks to MFC Survival LTP (MFC) under request for proposals (RFP) DAAJ10-84-R-A120. We dismiss the protest.

On June 26, 1984, the Army issued a notice in the Commerce Business Daily of its intent to award a sole-source contract for the tanks to RCI. Instead of making award to RCI, the Army, after amending the solicitation several times, made award on April 17, 1985 to MFC. That firm submitted an unsolicited proposal and, according to the protester, received the award based on its low price.

RCI argues that the award to MFC is invalid because the provision of law initially relied on by the contracting officer for negotiation authority, 10 U.S.C. § 2304(a)(10) (1982), was changed by the Competition in Contracting Act of 1984. See 10 U.S.C. § 2304(c) (Supp. III 1985). The protester also seems to object to the fact that the award was made competitively instead of on a sole-source basis. Further, RCI contends that the evaluation process was faulty because it resulted in an award to a firm which offered an "off the shelf" product which did not meet the specifications. Finally, RCI complains that MFC has failed two first article tests and that the Army has changed the contract specifications drastically to allow MFC to perform. RCI asks that MFC's contract be terminated and award made to it.

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Our Bid Protest Regulations require that protests be filed within 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986). A protester has an affirmative obligation to diligently pursue the information that forms the basis of its protest, and if it does not do so within a reasonable time, our Office will dismiss the ultimately filed protest as untimely. Fugro Inter, Inc., B-219323, Oct. 2, 1985, 85-2 CPD ¶ 373.

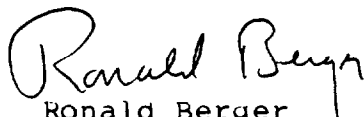
Here, the award was made to MFC on April 17, 1985 and the protester contends it first knew of MFC's performance problems in the fall of 1985. RCI states, however, that it has attempted to resolve these matters with the Army and that it obtained the information needed to file the protest at an October 8, 1986 meeting.

There is no indication that RCI has previously filed a formal written protest with the Army nor does the protester point out how the information it received on October 8 regarding MFC's performance relates to its protest of the award decision. In our view, obtaining information a year and a half after award can hardly be termed as diligent pursuit. Accordingly, we find the protest to be clearly untimely.

We further point out that we generally do not consider it appropriate to consider a protest that an agency should procure an item from a particular firm on a sole-source basis, since our protest function essentially is to ensure full and open competition. University of Dayton Research Institute, B-220589, Jan. 30, 1986, 86-1 CPD ¶ 108. We also do not consider issues relating to the acceptance of a first article or, generally, to the modification of specifications after award, since they concern contract administration, an area we do not consider under our protest function. 4 C.F.R. § 21.3(f)(1); Descomp Inc., B-220085.2, Feb. 19, 1986, 86-1 CPD ¶ 172.

In view of the fact that we are dismissing the protest, we will not consider RCI's claim for protest costs. See Fugro Inter, Inc., B-219323, supra.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel